

## APPENDIX 5A (NON-HCPP)

### LENDER ENDORSEMENTS

With respect to any policy of insurance noted in Schedule 5 as requiring these Lender Endorsements, Project Co and the Authority will use all reasonable efforts to have the underwriters of such policies include terms and endorsements substantially similar to those set out in this Appendix 5A with such changes and amendments as may reasonably be required in the context of the coverage provided under, and the wording contained in, each such policy.

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Notwithstanding any other provision of this Policy, the following endorsement shall apply:

#### Section I: Definitions

##### 1. In this endorsement:

**Authority** means Children's and Women's Health Centre of British Columbia Branch;

**Effective Date** means April \_\_\_\_\_, 2014:

**Finance Parties** means the Indenture Trustee and the Senior Lenders;

**Indenture Trustee** means BNY TRUST COMPANY OF CANADA as indenture trustee for the Senior Lenders;

**Insurance Proceeds Account** means the account described as such in the Trust Indenture;

**Insured** means those parties so described in the policy declarations;

**Insurers** means the insurer or insurers underwriting this insurance policy;

**Project** means the project described in the declarations to this Policy;

**Project Co** means Affinity Partnerships;

**Senior Lenders** means the Bondholders (as that term is used in the Trust Indenture); and

**Trust Indenture** means the Trust Indenture dated as of the Effective Date between Project Co and the Indenture Trustee as indenture trustee.

#### Section II: Policy formation/basis

##### 2. Separate Policy

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each Insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other Insured of

the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

### **3. Interest of the Finance Parties and the Authority**

- 3.1 The Insurers acknowledge that the Finance Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional insureds under this Policy and that the premium specified in this Policy provides consideration for their being insured parties.
- 3.2 The Insurers acknowledge that the Authority and (in respect of third party liabilities) its officers, directors, employees, secondees and assigns are each additional insureds under the sections of this Policy relating to property damage and third party liability risks and that the premium specified in this Policy provides consideration for their being insured parties.

### **4. Liability for premium**

Neither the Indenture Trustee, nor the Finance Parties shall be liable for the payment of any premium under this Policy although they may choose to pay the premium.

### **5. Disclosure**

- 5.1 The Finance Parties shall have no duty of disclosure to Insurers in relation to the Policy.
- 5.2 The Insurers acknowledge to the Finance Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring Project Co in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Finance Parties or their directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Finance Party. The acknowledgements provided by the Insurers in this clause 5.2 shall have no effect on any rights that Insurers might have had under or in relation to the Policy against any party (including Project Co) other than the Finance Parties and the Indenture Trustee in the absence of such acknowledgements.
- 5.3 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

## **Section III: Rights to avoid/cancel or change Policy terms**

### **6. Non-vitiation**

- 6.1 The Insurers undertake to each Insured that the Policy will not be invalidated as regards the rights and interests of such Insured and that the Insurers will not seek to avoid any liability under this Policy because of any act, neglect, error or omission made by any other Insured, including

any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfilment by any other Insured of any condition, warranty or provision contained in the policy.

- 6.2 The Insurers agree that no Insured shall be penalised or prejudiced in any way by any unintentional or inadvertent misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of this Policy (together "the Relevant Matter"), but that this shall not apply as regards the individual Insured responsible for the Relevant Matter if that Insured fails to notify the Insurers or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Insured become aware or are made aware of the Relevant Matter.

## **7. Cancellation**

- 7.1 The Insurers agree that they shall not seek to cancel or suspend the construction phases of this insurance except: for non payment of premium;
- 7.2 The Insurers shall promptly notify the Indenture Trustee and the Authority in writing of any default in the payment of premium and shall give the Indenture Trustee and the Authority at least 30 days notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

## **8. Changes in cover**

The Insurers shall give the Indenture Trustee and the Authority at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

## **9. Amendments to Endorsement**

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between Project Co, the Insurers and the Indenture Trustee, such amendment to be endorsed on the Policy.

## **Section IV: Claims**

### **10. Notice of claims**

- 10.1 Notice of claim by the Authority or the Finance Parties or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

### **11. Claim Payments/Loss Payee**

Payments made in accordance with this Clause 11 shall, to the extent of the payment, discharge the Insurers' liability to pay Project Co or any other Insured.

- 11.1 In respect of property and boiler and machinery risks only

All claim payments or return premium shall be paid into the Insurance Proceeds Account or to such other account as the Indenture Trustee may specify in writing.

11.2 In respect of the insurance under this Policy of third party liability risks only

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the Insurance Proceeds Account or such account as the Indenture Trustee directs in writing.

Any return premiums shall be paid to the Insurance Proceeds Account or such other account as the Indenture Trustee directs in writing.

11.3 In respect of the insurance under this Policy of loss of revenue risks only

All claim payments or return premiums shall be paid to the Insurance Proceeds Account or such other account as the Security Agent directs in writing.

**12. Waiver of subrogation**

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the appropriate Schedules arising out of any occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any:

- (i) such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- (ii) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iii) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iv) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)–(e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out).

**13. Primary insurance**

The Insurers agree that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk insured under this Policy is also insured under any other policy of insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

- (a) excess layers of third party cover effected specifically for the Project;

- (b) any third party liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;
- (c) any claim under this Policy to which a Marine 50/50 Clause applies, if any;
- (d) any claim made under a Contingent Motor Liability extension to this Policy, if any; or
- (e) any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
  - (i) any other policy specifically effected for the construction or operational phase(s) of the Project; or
  - (ii) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Project;
 or a related business interruption insurance policy.

## **Section V: Miscellaneous**

### **14. Notice of Security Interest**

The Insurers acknowledge that by an assignment contained in a general security agreement dated on or about the Effective Date (the "Assignment"), Project Co assigned by way of security to the Finance Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers confirm that they have not been notified of any other assignment of or security interest in Project Co's interest in this insurance.

### **15. Notice**

15.1 All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:

15.1.1 if by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and

15.1.2 if by post, within 2 business days of release from the relevant Insurer's office.

15.2 The address and fax number of the Indenture Trustee for all notices under or in connection with the Policy are those notified from time to time by the Finance Parties for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Indenture Trustee is as follows:

Address: 320 Bay Street, 11th Floor  
Toronto, Ontario M5H 4A

Fax No: 416-360-1611

Attention: Corporate Trust Administration

15.3 The address and fax number of the Authority for all notices under or in connection with the Policy are those notified from time to time by the Authority for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Authority is as follows:

Address: c/o Provincial Health Services Authority  
700-1380 Burrard St.  
Vancouver, BC V6Z 2H3

Fax No.: 604-708-2700

Attention: Arden Krystal, Chief Operating Officer

**16. Governing law & Jurisdiction**

The Policy shall be governed and interpreted in accordance with the Law of British Columbia.

This endorsement overrides any conflicting provision in this Policy.